

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

JAMES CHRISTOPHER HARDIN d/b/a  
HARDIN'S BODY & GLASS, INC.

PLAINTIFF

vs.

No.  
1:00CV468-D-D

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY; ROGER MANN; and  
RONALD BLACKWELL

DEFENDANTS

OPINION

Presently before the court is the Plaintiff's motion to remand this matter to the Circuit Court of Lowndes County, Mississippi.<sup>1</sup> Upon due consideration, the court finds that the motion should be granted and this cause remanded to state court for ultimate resolution.

*A. Factual Background*

The Plaintiff in this action, J. Christopher Hardin, owns Hardin's Body & Glass, Inc., an automobile body repair business located in Columbus, Mississippi. From November of 1996 until June of 1999, Hardin and State Farm Mutual Automobile Insurance Company were parties to an agreement whereby State Farm agreed to refer automotive repair customers to Hardin so long as Hardin complied with State Farm's repair facility criteria. In June of 1999, State Farm unilaterally terminated the agreement it had with Hardin, and ceased referring its policyholders to Hardin for automotive repairs.

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<sup>1</sup>Also pending before the court are the following additional motions: (1) the Plaintiff's motion for oral argument, which shall be denied; (2) the Plaintiff's request for an award of attorney's fees pursuant to 28 U.S.C. § 1447(c); this request shall be denied because the court finds that the Defendants had objectively reasonable grounds to believe that removal of this cause was legally proper; and (3) the Defendants' motion to dismiss, or in the alternative, for summary judgment. Adjudication of this motion shall be reserved for the state court upon remand.

Hardin filed this suit in the Circuit Court of Lowndes County, Mississippi, on October 23, 2000, alleging that State Farm, as well as the two individual Defendants - Roger Mann, who is a manager for State Farm's estimators, and Ronald Blackwell, who is a manager for State Farm's claims representatives - engaged in conduct that renders them liable under various Mississippi state law causes of action, including tortious interference with prospective business advantage. The Defendants removed the action to this court on November 22, 2000, pursuant to 28 U.S.C. §§ 1332 and 1441, on the basis of diversity jurisdiction. Thereafter, the Plaintiff motioned the court to remand this matter to state court.

*B. Standard for Remand*

The Judiciary Act of 1789 provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Original federal diversity jurisdiction exists "where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a); Sid Richardson Carbon & Gasoline Co. v. Interenergy Res., Ltd., 99 F.3d 746, 751 (5<sup>th</sup> Cir. 1996). In this case, there is no dispute that the amount in controversy exceeds \$75,000.00. The Plaintiff, however, asserts that the court does not possess diversity jurisdiction because this action is not between citizens of different states, as is required by 28 U.S.C. § 1332.

The Plaintiff and one of the individual Defendants, Ronald Blackwell, are indisputably resident citizens of Mississippi. This fact, however, will not destroy federal diversity jurisdiction if the Plaintiff fraudulently joined Blackwell in order to defeat diversity. Rodriguez v. Sabatino, 120 F.3d 589, 591 (5<sup>th</sup> Cir. 1997). But, if the court finds that Blackwell has not been fraudulently joined, then federal diversity jurisdiction is lacking, and the court must remand this matter to state court. See Whalen v. Carter, 954 F.2d 1087, 1094 (5<sup>th</sup> Cir. 1992) (federal diversity jurisdiction exists only if no plaintiff is a citizen of the same state as any defendant); Wright v. Combined Ins. Co. of America, 959 F. Supp. 356, 361 (N.D. Miss. 1997).

The party alleging fraudulent joinder bears the burden of persuasion, and that burden is quite stringent. See Hart v. Bayer Corp., 199 F.3d 239, 246 (5<sup>th</sup> Cir. 2000) ("The burden of persuasion placed upon those who cry 'fraudulent joinder' is indeed a heavy one."). In order to prove that a non-diverse party has been fraudulently joined by a plaintiff hoping to defeat diversity, the removing party must demonstrate either "outright fraud in the plaintiff's recitation of jurisdictional facts," or that there is "absolutely no possibility that the plaintiff will be able to establish a cause of action against the in-state defendant[s] in state court." Hart, 199 F.3d at 246.

The Defendants here do not allege outright fraud, so the court must determine whether there is absolutely no possibility that the Plaintiff will be able to establish a cause of action against Blackwell in state court. In making this determination, the court evaluates all of the factual allegations in the Plaintiff's pleadings in the light most favorable to the Plaintiff, and the court examines relevant state law and resolves all uncertainties in favor of the Plaintiff. Hart, 199 F.3d at 246. Further, in evaluating a claim of fraudulent joinder, the court does not focus on whether the Plaintiff will prevail on the merits of his claims. Instead, the court determines whether there is a possibility that the Plaintiff will be able to state a claim against Blackwell, the allegedly fraudulently joined individual Defendant. Rodriguez, 120 F.3d at 591.

### *C. Discussion*

Whether a case states a cognizable claim against a defendant is determined by reference to the allegations made in the plaintiff's original pleadings, although the court may "pierce" those pleadings in making its determination. B, Inc. v. Miller Brewing Co., 663 F.2d 545, 549 (5<sup>th</sup> Cir. 1981); Wheeler v. Frito Lay, Inc., 743 F. Supp. 483, 485 (S.D. Miss. 1990). In the case at bar, the Plaintiff alleges, *inter alia*, that Blackwell committed the tort of interference with prospective business advantage.

Under Mississippi law, an agent for a disclosed principal can be held personally liable for his own tortious acts committed within the scope of his employment, and a tort claim can be maintained against that agent. Hart, 199 F.3d at 247. The agent is subject to personal liability when he "directly participates in or authorizes the commission of a tort." Hart, 199 F.3d at 247 (quoting Mississippi

Printing Co., Inc. v. Maris, West & Baker, Inc., 492 So. 2d 977, 978 (Miss. 1986)).

The Plaintiff has alleged that the Defendant Ronald Blackwell, as a manager of State Farm, directly participated in the commission of the tort of interference with prospective business advantage, while within the scope of his employment. See Complaint pp. 6-8, para. 24-26, 31-32. Upon careful review of the parties' submissions, the court finds that the scenario set forth in the Plaintiff's pleadings, if true, could possibly result in liability being imposed on Blackwell for his alleged tortious acts. The Plaintiff has sufficiently set forth specific allegations, in paragraphs 24, 25, 26, 31 and 32 of the Complaint, demonstrating that Blackwell may have participated in the commission of the tort of interference with prospective business advantage. See Freeman v. Huseman Oil Int'l, Inc., 717 So. 2d 742, 744 (Miss. 1998) (setting forth elements of tort of interference with prospective business advantage under Mississippi law); Christmon v. Allstate Ins. Co., 82 F. Supp. 2d 612, 615 (S.D. Miss. 2000) (same). As such, Blackwell faces potential liability for his actions, and the court finds that the Defendants have not demonstrated that there is absolutely no possibility that the Plaintiff will be able to establish a cause of action against Blackwell in state court.

#### *D. Conclusion*

In sum, the Plaintiff's complaint, taking all allegations set forth as true, at least raises the possibility that he could succeed in establishing a tort claim against the Defendant Blackwell under Mississippi law. Accordingly, Blackwell's citizenship cannot be ignored for the purposes of determining subject matter jurisdiction. His presence in this civil action means that the complete diversity of citizenship necessary to maintain federal jurisdiction over this case is absent. As such, this cause shall be remanded to the Circuit Court of Lowndes County for ultimate resolution. A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of August 2001.

Chief Judge

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DEFENDANTS

ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Plaintiff's motion to remand (docket entry 13) is GRANTED;
- (2) this cause is hereby REMANDED to the Circuit Court of Lowndes County, Mississippi;
- (3) the Plaintiff's motion for oral argument (docket entry 33) is DENIED;
- (4) the Plaintiff's request for an award of attorney's fees pursuant to 28 U.S.C. § 1447(c) is DENIED; and
- (5) ruling upon the Defendants' motion to dismiss, or alternatively, for summary judgment (docket entry 32) is hereby RESERVED for the state court upon remand.

SO ORDERED, this the \_\_\_\_ day of August 2001.

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Chief Judge